

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

JUAN MANUEL CRUZADO-LAUREANO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 3:15-CV-01930 (JAF)

ORDER ON PETITION FOR WRIT OF ERROR CORAM NOBIS

“In federal courts, the maxim, ‘if at first you don’t succeed, try, try again’ does not apply.” *In re Moncier*, 488 Fed. Appx. 57, 60 (6th Cir. 2012). It is a maxim that petitioner Juan Manuel Cruzado-Laureano (“Cruzado”) has failed to accept. On July 13, 2015, Cruzado petitioned the court under 28 U.S.C. § 1651(a) for a writ of error coram nobis, which the First Circuit Court of Appeals has called the “criminal-law equivalent” of a Hail Mary pass because, like the football tactic, it is “made in desperation at the end of a game, with only a small chance of success.” *United States v. George*, 676 F.3d 249, 251 (1st Cir. 2012). Like most desperate attempts, Cruzado’s fails. The facts and the law clearly dictate the outcome, and the court must deny Cruzado’s latest attempt to undo the underlying judgment of conviction in *Cruzado-Laureano v. United States*, 3:01-cr-00690-JAF-1.

“It suffices to say here that Cruzado, the former mayor of Vega Alta, Puerto Rico, was convicted by a jury in June 2002 on charges of embezzlement, extortion, money laundering and witness tampering stemming from conduct undertaken while he was in office, including demanding kickbacks on municipal contracts.” *United States v.*

1 *Cruzado-Laureano*, 527 F.3d 231, 233 (1st Cir. 2008) (*Cruzado III*). Over the next
2 thirteen-odd years, Cruzado and his lawyer, Alexander Zeno, Esq., have generated an
3 avalanche of related federal-court litigation. We will briefly survey this history in order
4 to properly situate Cruzado's new petition.

5 Cruzado appealed the judgment of conviction three times in a row. In his first
6 appeal, the First Circuit affirmed Cruzado's conviction against challenges to the legal
7 sufficiency of the trial evidence that the Court called "specious," "little more than an
8 implicit admission of guilt and a plea for leniency," and "elevat[ing] coincidence to an art
9 form." *United States v. Cruzado-Laureano*, 404 F.3d 470, 485-86 (1st Cir. 2005)
10 (*Cruzado I*). The Court remanded the case for resentencing, nonetheless, because we had
11 erroneously followed the Pre-Sentence Report in using the 2000 Sentencing Guidelines,
12 instead of the 2002 Guidelines, to calculate the appropriate sentencing range.¹ *Id.* at 488-
13 89. On remand, we used the correct guidelines and then "imposed a sentence identical to
14 the one earlier imposed." *United States v. Cruzado-Laureano*, 440 F.3d 44, 47 (1st Cir.
15 2006) (*Cruzado II*).

16 In his second appeal, Cruzado challenged the resentence, including on grounds
17 that the First Circuit found "simply implausible." *Id.* at 48 n.9. In the end, the Court held

¹ While his first appeal was pending before the First Circuit, Cruzado petitioned this court for a writ of habeas corpus under 28 U.S.C. § 2255. (3:03-cv-01867-JAF, ECF No. 1.) We dismissed the petition without prejudice on the ground that we would "not attempt to sort out section 2255 allegations or collateral attacks to the conviction and sentence" while the case "is awaiting appellate decision." (*Id.* ECF No. 2.) Cruzado did not contest that disposition of the petition. *See United States v. Weekes*, 611 F.3d 68, 71 (1st Cir. 2010) ("We have long recognized that 'in the absence of extraordinary circumstances, the orderly administration of criminal justice precludes a district court from considering a § 2255 motion while review of the direct appeal is still pending.'" (quoting *United States v. Gordon*, 634 F.2d 638, 638 (1st Cir. 1980)).

1 that we had acted properly in “large part” in imposing the resentence, but had misapplied
2 “two [guidelines] provisions that dealt with [Cruzado’s] abuse of his elected office,” and
3 so the case was once again remanded for resentencing. *Id.* at 45. In sending the case
4 back to us, the Court underscored that it did “not intend to intimate that the length of the
5 sentence should necessarily be changed; what matters is that the premise as to the
6 Guideline range must be correct.” *Id.* at 50.

7 On remand, we corrected the guidelines range and once again imposed the same
8 sentence, including restitution and fine. *Cruzado III*, 527 F.3d at 234. But, at that third
9 sentencing proceeding, Cruzado wanted to achieve much more. In particular, he “sought
10 to present witnesses to prove that he was ‘actually innocent,’ that he had been subject to
11 malicious prosecution, and that there were no victims of his crime – and hence no need
12 for restitution – because no loss had occurred.” *Id.* Rather than allow the proceeding to
13 devolve into several mini-trials that would have gone far beyond our mandate, we let
14 Cruzado submit the prepared direct examinations of the nine witnesses he had wanted to
15 call, submit an audit report from the municipality that purportedly disagreed with our
16 specific findings of loss in the restitution order, and submit an outline of the argument he
17 would have made if he had fully questioned all nine witnesses. *Id.* at 238. When we
18 permitted Cruzado to call four character witnesses to testify on his behalf, “only two of
19 [them] turned out to know him personally.” *Id.* Even then, they spoke mostly in
20 platitudes, calling Cruzado a “good citizen” and “person” whose failings, if any, were
21 “perhaps” caused by a “lack of orientation.” *Id.*

1 In his third appeal, the First Circuit affirmed the resentence against Cruzado's
2 usual list of complaints, though not without observing that his continuing "refusal to
3 acknowledge that he [had] committed criminal acts . . . giv[es] relevant insight into his
4 character and rais[es] concerns about his respect for the law and his future conduct." *Id.*
5 at 237. The entire appellate process took more than six years to complete, finally ending
6 in January 2009, when the United States Supreme Court denied Cruzado's petition for a
7 writ of certiorari on his third appeal. *See Cruzado-Laureano v. United States*, 555 U.S.
8 1099 (2009). Unfortunately, this does not come close to narrating the full history of
9 plaintive litigation that Cruzado's underlying conviction has spawned.

10 In this District Court alone, Cruzado has sued multiple people, governments, and
11 organizations over the fact that he was ever suspected of criminal conduct, let alone
12 prosecuted and convicted of it. For example, in May 2006, Cruzado filed suit against the
13 Commonwealth of Puerto Rico, the former Governor and the former Secretary of Justice
14 of the Commonwealth, the political party of the former Governor and Secretary (i.e., the
15 Partido Popular Democrático), the former Secretary of the political party, and a local
16 special prosecutor who had been appointed to investigate Cruzado, seeking damages from
17 them for "malicious prosecution" because they had, among other things, "contemplated
18 bringing charges against [him]," which, he claimed, "adversely affected the outcome of
19 [his 2002] trial before the United States District Court for the District of Puerto Rico,
20 Case No. 01-690 (JAF)."² (3:06-cv-01471-ADC, ECF No. 1 ¶¶ 1, 12-13.) Now Chief
21 Judge Aida M. Delgado-Colón ultimately dismissed the case with prejudice for failing to

² This was the federal trial that resulted in Cruzado's underlying judgment of conviction.

1 state a claim upon which relief could be granted. (3:06-cv-01471-ADC, ECF Nos. 67,
2 71.)

3 In May 2006, Cruzado also filed suit against the United States of America, the
4 former United States Attorney for the District of Puerto Rico, several federal prosecutors
5 and law-enforcement agents who had worked on the case that led to his underlying
6 conviction, and many of the same Commonwealth officers and institutions he had sued in
7 the case pending before Chief Judge Delgado-Colón, seeking damages from them for
8 “malicious prosecution” because they had, among other things, “acted maliciously in
9 instigating the criminal prosecution in that part of their motives was to create the
10 impression that they were fighting corruption, to better their public images, and in the
11 process, [to] inflict upon [Cruzado] as much punishment as possible.” (3:06-cv-01471-
12 ADC, ECF No. 1 ¶¶ 1, 17.) We dismissed the case for failing to state a claim upon which
13 relief could be granted. (3:06-cv-01472-JAF, ECF No. 1 ¶ 40.) Cruzado moved the court
14 to reconsider the dismissal, but we denied the motion as meritless. (*Id.* at ECF Nos. 45,
15 49.)

16 In February 2007, while the above motion to reconsider was pending, Cruzado
17 once again filed suit against many of the same federal and Commonwealth parties from
18 his May 2006 cases, seeking damages yet again for malicious prosecution on virtually the
19 same grounds as before. (3:07-cv-01160-JP, ECF No. 1.) Judge Jaime Pieras, Jr.,
20 dismissed the case with prejudice on res-judicata grounds because he had found that
21 Cruzado’s new complaint was “identical” to the complaint in the malicious-prosecution

1 case we had just dismissed. (3:07-cv-01160-JP, ECF Nos. 23-24.) The First Circuit
2 summarily affirmed the decision. (*Id.* at ECF No. 38.)

3 In December 2009, on the day after his term of supervised release had expired,
4 Cruzado filed a petition with the court, substantially similar to the one now under review,
5 seeking a writ of error coram nobis under 28 U.S.C. § 1651(a).³ (3:09-cv-02303-JAF,
6 ECF No. 1.) We ultimately denied the petition on the ground that Cruzado had failed to
7 allege any “significant, continuing collateral consequences flowing from his conviction”
8 that might warrant relief. (3:09-cv-02303-JAF, ECF No. 31 at 5.) In fact, Cruzado had
9 “failed to allege any collateral consequences separate from his conviction and financial
10 obligation.” (*Id.* at ECF No. 31 at 8.) At the end of our opinion announcing the denial,
11 we observed that, more than eight years after his conviction, Cruzado has “continue[d] to
12 waste judicial resources [by] bringing frivolous arguments.” (*Id.* at ECF No. 31 at 9.)
13 We warned Cruzado that he had “horsed around long enough” and that the court
14 possessed “discretionary powers to regulate the conduct of abusive litigants,” including
15 the power to enjoin him from filing more “frivolous and vexatious motions” related to his
16 2002 conviction. (*Id.* at ECF No. 31 at 9.) The First Circuit then affirmed our denial of
17 coram-nobis relief. (*Id.* at ECF No. 39.)

18 In May 2012, Cruzado sued the Commonwealth of Puerto Rico yet again, alleging
19 that the Commonwealth had violated the constitutional prohibition on bills of attainder
20 and ex-post-facto laws and had violated his equal-protection and free-speech rights by

³ In the petition, which was filed on December 31, 2009, Cruzado alleged that he was “due to complete his term of supervised release” that same day. (3:09-cv-02303-JAF, ECF No. 1 at 2.) In our order and opinion denying the petition, we found that Cruzado’s supervised release had actually “expired on December 30, 2009.” (*Id.* at ECF No. 31 at 2.) Cruzado has not challenged that finding.

1 enacting a law that prohibited, from elected public office, anyone previously convicted of
2 a crime of moral turpitude. (3:12-cv-01317-CCC, ECF Nos. 1 ¶¶ 1, 3, 7-8, 11, 15; 1-1.)
3 Cruzado claimed that the law “was enacted in order to forbid [him] from running for
4 Mayor of Vega Alta” again. (*Id.* at ECF No. 1 ¶ 10.) Cruzado then moved the court to
5 let him proceed in forma pauperis, but Judge Carmen Consuelo Cerezo denied the motion
6 under 28 U.S.C. § 1915(e)(2)(B)(i), on the ground that Cruzado’s claims were
7 “frivolous.” (*Id.* at ECF Nos. 3, 10.) Judge Cerezo eventually dismissed the case
8 because of Cruzado’s failure to pay the filing fee. (*Id.* at ECF No. 11.) The First Circuit
9 affirmed the dismissal, finding “no error in the court’s determination that the complaint
10 was frivolous.” (*Id.* at ECF No. 19 at 2.)

11 Cruzado now returns before this court with a new petition for a writ of error coram
12 nobis. (ECF No. 1.) In the petition, Cruzado largely repeats the claims that he first
13 presented to the court at his third sentencing proceeding in April 2006, and then reiterated
14 in his first coram-nobis petition in December 2009. Beyond the passage of years, perhaps
15 the only thing that distinguishes Cruzado’s present request for relief from his earlier ones
16 is his recitation of “the collateral consequences of his conviction” that, he claims, warrant
17 the court’s reconsideration of a judgment that has long been final. (ECF No. 1 at 2.)

18 “[C]oram nobis is an extraordinary remedy, which is available ‘only under
19 circumstances compelling such action to achieve justice.’” *Murray v. United States*, 704
20 F.3d 23, 28 (1st Cir. 2013) (quoting *United States v. Morgan*, 346 U.S. 502, 511 (1954)).
21 “It is meant to correct errors ‘of the most fundamental character; that is, such as render[]
22 the proceeding itself irregular and invalid.’” *Id.* (quoting *United States v. Mayer*, 235

1 U.S. 55, 69 (1914)) (alteration in original). The First Circuit “has adopted a three-part
2 test to determine whether a petitioner is eligible for coram nobis relief, along with a
3 fourth part that addresses whether relief should actually be granted.” *Id.* at 29. “To
4 establish eligibility, the petitioner must first adequately explain his failure to seek relief
5 earlier through other means; second, he must show that he continues to suffer a
6 significant collateral consequence from the judgment being challenged and that issuance
7 of the writ will eliminate this consequence; and third, he must demonstrate that the
8 judgment resulted from a fundamental error.” *Id.* “The petitioner bears the burden of
9 persuasion on all three steps.” *Id.* “Even if the petitioner meets all three of the
10 conditions in the coram nobis eligibility test, the court retains discretion to grant or deny
11 the writ, depending on the facts and circumstances of the individual case.” *Id.* at 29-30.
12 In other words, “[s]atisfying the three-part test ‘is a necessary, but not a sufficient,
13 condition for the issuance of the writ.’” *Id.* at 30 (quoting *George*, 676 F.3d at 255).
14 After all, “the extraordinary nature of the writs implies that they should be issued
15 sparingly,” and “successful petitions for coram nobis are hen’s-teeth rare.” *George*, 676
16 F.3d at 253-54; *see also Carlisle v. United States*, 517 U.S. 416, 429 (1996) (“it is
17 difficult to conceive of a situation in a federal criminal case today where [a writ of coram
18 nobis] would be necessary or appropriate”) (alteration in original) (quoting *United States*
19 *v. Smith*, 331 U.S. 469, 475 n.4 (1947)). Applying this test to Cruzado’s petition, the
20 court finds that the petition must be denied.

21 Cruzado fails to mention, let alone adequately explain, why he did not seek relief
22 earlier through more appropriate means. Although Cruzado did raise claims that were

1 similar to, if not the same as, his current ones at his third sentencing proceeding and in
2 his first coram-nobis petition, he never sought review of these claims in a proper habeas
3 petition. This particular oversight is quite glaring because “[t]he writ of habeas corpus
4 historically has served as the principal vehicle for testing the legality of executive
5 detentions.” *Trenkler v. United States*, 536 F.3d 85, 96 (1st Cir. 2008). Cruzado had
6 virtually the entire year of 2009 – from the judgment of conviction becoming final on
7 January 12, 2009, until the expiration of his supervised-release term on December 30,
8 2009 – to file a timely habeas petition under 28 U.S.C. § 2255. *See Butterworth v.*
9 *United States*, 775 F.3d 459, 468 (1st Cir. 2015) (“a conviction becomes final – and the
10 one-year period therefore starts to run – for purposes of § 2255(f)(1) when a petition for
11 certiorari is denied”) (quoting *In re Smith*, 436 F.3d 9, 10 (1st Cir. 2006)); *Francis v.*
12 *Maloney*, 798 F.3d 33, 37 (1st Cir. 2015) (“an individual serving a supervised release
13 term satisfies the ‘in custody’ requirement” of § 2255(a)). Instead, he inexplicably
14 waited until the day after his release from custody to raise these claims in his first coram-
15 nobis petition. (*See* 3:09-cv-02303-JAF, ECF No. 1 at 1 n.1.) It is doubtful that an
16 adequate explanation of this oversight or delay even exists.⁴

⁴ Cruzado’s first coram-nobis petition, like almost every other filing by him in his decade-plus long march through federal court to protest the underlying conviction, was drafted and submitted by his long-time professional counsel, Alexander Zeno, Esq. (*See* 3:09-cv-02303-JAF, ECF No. 1 at 9.) Zeno has shown himself to be a most unusual attorney, and Cruzado, a most unusual client. For years now, Zeno has been pushing the claim that Cruzado’s conviction should be overturned because Zeno rendered him ineffective assistance of counsel on his second appeal. (*See id.* at ECF No. 1 at 7; ECF No. 1 at 9-10.) Meanwhile, Cruzado has continued to retain Zeno, and Zeno has continued to represent Cruzado, even after Cruzado swore, under penalty of perjury in 2012, that he was destitute and had to litigate a case in forma pauperis, having no income except for \$673.00 in annual Social Security benefits, only \$117.00 in the bank, and no other assets to speak of. (3:12-cv-01317-CCC, ECF Nos. 3; 3-1.) In the past, Zeno has been suspended from the practice of law before this District Court because of his “chronic tendency” to submit filings that include “intemperate and unsubstantiated allegations that various [people] were

1 In any event, Cruzado “may not now resort to coram nobis relief to avoid § 2255’s
2 deadlines.” *Barreto-Barreto v. United States*, 551 F.3d 95, 103 (1st Cir. 2008). Again,
3 he has “failed to demonstrate that [a] § 2255 petition[] could not have been brought
4 within the one-year limitations period.” *Id.* And, it appears that he is now seeking coram
5 nobis, instead of habeas, relief “merely because he has failed to meet the AEDPA’s
6 gatekeeping requirements.” *Id.* (quoting *Matus-Leva v. United States*, 287 F.3d 758, 761
7 [9th Cir. 2002]). To give Cruzado access to coram-nobis relief under these circumstances
8 “would reduce AEDPA’s gatekeeping provisions to a meaningless gesture.” *Id.* (quoting
9 *Trenkler*, 536 F.3d at 99) (internal quotations omitted). Moreover, Cruzado may not use
10 the fact that he is “no longer in custody” and thus ineligible to file a § 2255 petition as a
11 reason to allow him to apply for coram-nobis relief instead. *See id.*

12 Cruzado also fails to show that he suffers from significant collateral consequences
13 of the conviction. In the petition, he asserts six alleged consequences: An obligation to
14 pay the restitution and fine, disqualification from jury service, disqualification from gun
15 ownership, disqualification from elected public office in Puerto Rico, and disqualification
16 from serving as representative payee of his disabled brother’s Social Security benefits.
17 (ECF No. 1 at 2-3.) But, aside from his continuing obligation to pay the restitution and
18 fine (which is self-evident because the judgment of conviction still stands),⁵ Cruzado
19 barely attempts to show that he will continue to suffer from any of those consequences.

guilty of, *inter alia*, dishonesty, partiality, stupidity, or possible criminality.” *In re Zeno*, 504 F.3d 64, 66 (1st Cir. 2007). Shadings of that well-established tendency crop up throughout the new petition.

⁵ As was explained in our opinion denying Cruzado’s first coram-nobis petition, the obligation to pay a restitution and fine does not represent a significant collateral consequence of conviction. (3:09-cv-

1 For example, a person is disqualified from federal jury service because of a felony
2 conviction only if “his civil rights have not been restored.” 28 U.S.C. § 1865(b)(5).
3 Similarly, a convicted felon is disqualified, under federal law, from possessing a firearm
4 only if he has not “had [his] civil rights restored.” 18 U.S.C. §§ 921(a)(20), 922(g)(1).
5 Whether Cruzado can have his civil rights restored is “a complicated question” that
6 “involves the interpretation of the federal law relating to federal civil rights.” *Beecham v.*
7 *United States*, 511 U.S. 368, 373 n. (1994). And, it is a question that Cruzado must
8 answer. This court will not blithely assume that a collateral consequence is so substantial
9 as to justify coram-nobis relief when the very statutes imposing the consequence mention
10 an exception for those who have had their civil rights restored. That is especially true
11 when Cruzado, who bears the burden of persuasion here, does not even attempt to show
12 that restoration is unavailable to him. Under such circumstances, “the possibility of
13 harm” from the alleged consequences remains “only speculative” and, thus, does not
14 constitute the kind of “civil disabilit[y] that would justify issuance of the writ.” *See*
15 *United States v. Craig*, 907 F.2d 653, 659 (7th Cir. 1990).

16 Cruzado fares slightly better with his disqualification, under Puerto Rico law, from
17 elected public office because it is utterly clear that the crimes for which he was convicted
18 “impl[y] moral turpitude.” *See* 21 L.P.R.A. § 4101(e) (setting forth the qualifications for
19 “[e]very candidate for mayor”); *see also Cruzado I*, 404 F.3d at 473-79 (setting forth in
20 great detail “the particulars of [Cruzado’s] criminal activity” as mayor). In the end,

02303-JAF, ECF No. 31 at 5-8.) That holding constituted the sole basis for denying the petition, and the First Circuit later affirmed the denial. (*Id.* at ECF No. 39.)

1 however, this disqualification cannot serve as a continuing collateral consequence either.
2 That is because Cruzado has not “shown that the court’s decree will eliminate the claimed
3 collateral consequence and bring about the relief sought.” *See George*, 676 F.3d at 256
4 n.3. After all, even if his conviction was vacated, Cruzado would still be barred from
5 elected office in Puerto Rico because he was “removed” from his mayoralty in late 2001
6 “for misconduct in the performance of his/her duties.” *See* 21 L.P.R.A. § 4101(f) (listing
7 an adequate and independent ground of disqualification); *see also Cruzado I*, 404 F.3d at
8 478 (noting that Cruzado was removed from public office following his arrest on
9 October 24, 2001, for crimes related to his abuse of the mayoralty).⁶

10 The only other collateral consequence that Cruzado cites is his alleged inability to
11 serve as representative payee of the Social Security benefits of his disabled brother
12 Wilfredo. Interestingly, this is the only collateral consequence whose existence Cruzado
13 actually attempts to prove. Unfortunately for him, his proof fails spectacularly. Cruzado
14 has appended to the petition a check for \$378.00 in Social Security benefits from the
15 United States Treasury. (ECF No. 1-3.) The check is made out to “Juan Cruzado
16 Laureano for Wilfredo Cruzado Laureano,” indicating that Cruzado had successfully
17 petitioned the Social Security Administration (“SSA”) to become representative payee of

⁶ On November 17, 2015, the court received in chambers a DVD from Cruzado, bearing a Vega Alta, Puerto Rico, postmark, dated November 10, 2015. The DVD contains a video in which Cruzado speaks at length to the camera, pleading that he must be allowed to run again for the mayoralty of Vega Alta because, once back in office, he will expose the people behind a series of allegedly illegally-obtained municipal contracts that, he asserts, no one else cares to reveal. Of course, if these illegal contracts actually exist, nothing bars Cruzado from acting as a whistleblower right now. It is simply ludicrous for Cruzado to argue that he must first be reelected to the seat of his corruption – itself, a speculative possibility – for him to expose the alleged corruption of others. The delivery of this DVD may have been an attempt to communicate with the court ex parte.

1 his brother Wilfredo's benefits checks. (ECF No. 1-3.) According to a note from the
2 SSA, this particular check was issued on March 31, 2015. (ECF No. 1-2.)

3 Now, Cruzado also appended to the petition an acknowledgement from the SSA,
4 dated March 23, 2015, that it had received his application to become representative
5 payee. (ECF No. 1-4.) The problem is that, in the SSA application, Cruzado declares,
6 under penalty of perjury, that he has "never been convicted of a felony," nor "been
7 imprisoned for more than one year." (ECF No. 1-4 at 1-2.) Cruzado admits that those
8 declarations are pure lies. Indeed, he claims that he "could not" make those declarations
9 "under oath." (ECF No. 1 at 3.) And yet, he did. He even supplied the court with the
10 proof. (*See* ECF No. 1-4 at 1.)

11 The court is aghast by the brazenness of Cruzado's apparent conduct. His SSA
12 application appears to have been submitted. In the copy of the application that Cruzado
13 appended to the petition, the SSA tells him, "We are returning the attached application
14 you submitted to us requesting to be payee for WILFREDO CRUZADO LAUREANO
15 for your records" because "[w]e stored the information you submitted with this request
16 electronically so there is no reason for us to retain a paper copy." (ECF No. 1-4 at 2.)
17 The SSA then reminds Cruzado that "[y]ou declared under penalty of perjury that you
18 examined all the information on your request and it is true and correct to the best of your
19 knowledge," and that "[y]ou were told that you could be held liable under law for
20 providing false statements." (ECF No. 1-4 at 2.) Eight days after the SSA acknowledged
21 receipt of the application, the SSA issued the benefits check to "Juan Cruzado Laureano
22 for Wilfredo Cruzado Laureano." (ECF No. 1-3.) This shows one of two things: Either

1 Cruzado committed perjury to become that check's payee, or a prior felony conviction
2 and prison time are not actually disqualifications from serving as representative payee.

3 Indeed, other than his say-so, Cruzado does not adduce any evidence that his
4 conviction has disqualified him from being representative payee. (*See* ECF No. 1 at 3
5 n.3.) That may be because his conviction does not constitute a categorical bar. Under the
6 Social Security Act, a person convicted of a felony offense can still serve as a
7 representative payee if "the Commissioner determines that the payment would be
8 appropriate notwithstanding the conviction." 42 U.S.C. § 1383(a)(2)(B)(iii)(IV). Of
9 course, if the Commissioner were to find that Cruzado is not an appropriate payee, the
10 reason behind the decision would be, by definition, something about Cruzado aside from
11 his conviction. Like his claims of disqualification from jury service and gun ownership,
12 Cruzado may not complain that a disqualification represents a continuing collateral
13 consequence when the very statute that creates disqualification includes a possible
14 exemption, thereby rendering the possibility of continued disqualification only
15 speculative. *See Craig*, 907 F.2d at 659.

16 Cruzado has also failed to demonstrate that the underlying judgment resulted from
17 any error, let alone a fundamental one. "The standard for determining whether an error is
18 fundamental is not precisely defined, but because coram nobis 'lies at the far end of [the]
19 continuum' of methods for challenging a judgment, it is a high standard." *Murray*, 704
20 F.3d at 29 (quoting *George*, 676 F.3d at 258). Here, Cruzado alleges only four run-of-
21 the-mill errors, none of which are convincing. (*See* ECF No. 1 at 3-10.)

1 First, Cruzado faults his trial attorney for not moving to suppress “all [of the]
2 information obtained” during the federal government’s “whole investigation” of him.
3 (ECF No. 1 at 4.) According to Cruzado, the government’s investigation started when an
4 FBI agent “obtained from Banco Popular de Puerto Rico . . . copies of some checks that
5 were issued by Mrs. Lilly Alonso payable to [him]” in violation of the Right to Financial
6 Privacy Act, 12 U.S.C. §§ 3401 *et seq.* (“the Act”). (ECF No. 1 at 3-4.) Cruzado opines
7 that “since the information obtained from these checks was what gave basis for [an FBI]
8 interview of Mrs. Alonso and from there to investigate the rest of the case,” all of the
9 government’s evidence was fruit of that allegedly poisonous tree. (ECF No. 1 at 4-5.)
10 But, even assuming a violation of the Act and a causal relationship between the assumed
11 violation and all of the government’s proof, Cruzado’s claim is unavailing. That is
12 because suppression is not an authorized remedy under the Act; only civil penalties and
13 injunctive relief are. *See* 12 U.S.C. §§ 3417, 3418. And, the Act specifically provides
14 that “[t]he remedies and sanctions described in this title shall be the only authorized
15 judicial remedies and sanctions for violations of this title.” 12 U.S.C. § 3417(d); *see also*
16 *United States v. Frazin*, 780 F.2d 1461, 1466 (9th Cir. 1986) (“Although Congress did
17 not explicitly address the availability of a suppression remedy during its consideration of
18 the Act, we find that remedy to be excluded under section 3417(d).”) Thus, Cruzado’s
19 trial attorney did not err by failing to file a meritless suppression motion.

20 Next, despite his conviction by an impartial jury of five counts of extortion, five
21 counts of money laundering, one count of embezzlement, and one count of witness
22 tampering, Cruzado lambastes the United States Attorney for “prosecut[ing] a case

1 which,” he alleges, “did not warrant prosecution,” did not have “probable cause,” and
2 was “fabricat[ed]” by a conspiracy of prosecutors and law-enforcement agents. (ECF
3 No. 1 at 5-6.) To substantiate this claim, Cruzado asks the court to convene an
4 evidentiary hearing – which, he is aware, some might “dismiss[] . . . as a fishing
5 expedition” – so that members of the federal prosecutorial and investigative team can “at
6 least state under oath that what [he is] claiming here is not the truth.” (ECF No. 1 at 7.)
7 The court denies this request because, as Cruzado correctly notes, his allegations against
8 the government’s proof fundamentally come down to a question of “credibility.” (ECF
9 No. 1 at 7.) And, “[c]redibility determinations, the weighing of the evidence, and the
10 drawing of legitimate inferences from the facts’ [are] all tasks for the jury, not the judge.”
11 *Garcia-Gonzalez v. Puig-Morales*, 761 F.3d 81, 99 (1st Cir. 2014) (quoting *Anderson v.*
12 *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)); *see also United States v. Munyenyezi*,
13 781 F.3d 532, 538 (1st Cir. 2015). Again, it was the jury that convicted Cruzado of all
14 twelve counts. Accordingly, this claim of error fails as well.

15 Next, Cruzado alleges that the prosecution secured his conviction by “obscur[ing]
16 the true facts” and “confusing” the jury, and that his trial attorney thus provided him with
17 ineffective assistance by failing to adduce sufficient evidence to “clarify[] the true facts
18 to the jury.” (ECF No. 1 at 8.) For example, Cruzado claims that his trial attorney could
19 have called the “Finance Director of the Municipality of Vega Alta” to testify “that the
20 records of the Municipality of Vega Alta showed no type of embezzlement and/or theft
21 during the period covered by the [criminal charges].” (ECF No. 1 at 9.) Cruzado also
22 claims that his trial attorney should have argued that some of the money he was convicted

1 of embezzling, extorting or laundering had “no restrictions on [its] use,” as if to suggest
2 that the money was free for the taking. (ECF No. 1 at 8.) These claims “simply amount
3 to ‘Monday morning quarterbacking of trial tactics,’ which is insufficient to sustain an
4 ineffective assistance of counsel claim.” *United States v. Valerio*, 676 F.3d 237, 248 (1st
5 Cir. 2012) (quoting *United States v. Thomann*, 609 F.2d 560, 566 (1st Cir. 1979)).

6 Finally, Cruzado’s lawyer falls on his sword, issuing a brief mea culpa about how
7 he failed Cruzado during the second appeal by waiving Cruzado’s challenge to the non-
8 incarcerating aspects of his sentence. (ECF No. 1 at 9-10.) But that was hardly an
9 example of ineffective assistance because there was no real challenge to bring. As the
10 First Circuit later noted, “the fine imposed, \$10,000, was the lowest point of a range that
11 went up to \$500,000,” and “[t]he restitution order was based on specific findings of loss.”
12 *Cruzado III*, 527 F.3d at 235. Granted, the terms of supervised release – three years on
13 each of the eleven Class C felony convictions, and one year on the class E felony
14 conviction, to be served concurrently (3:01-cr-00690-JAF-1, ECF No. 248 at 3) – were
15 the maximum authorized by law. *See* 18 U.S.C. § 3583(b). But, determining the
16 appropriate amount of supervised release “is an exercise committed to the sound
17 discretion of the district court,” and Cruzado does not even gesture at an argument for
18 overturning this aspect of the sentence. *United States v. Morales*, 801 F.3d 1, 11 n.6 (1st
19 Cir. 2015). Accordingly, Cruzado has once again failed to prove error, let alone a
20 fundamental one.

21 As we observed at the very beginning, Cruzado’s modus operandi throughout his
22 years of challenging the underlying conviction has been one ill-suited to success before a

1 federal court: “If at first you don’t succeed, try, try again.” *See In re Moncier*, 488 Fed.
2 Appx. at 60. Because this petition represents Cruzado’s second Hail Mary pass toward
3 his longstanding goal of vacating his now thirteen-year-old conviction, the court wants to
4 be clear that even if he had satisfied all three conditions of the coram-nobis eligibility
5 test, we still would have denied him the writ based on the particular facts of his case. *See*
6 *Murray*, 704 F.3d at 29-30. In the end, Cruzado’s frequent challenges to his conviction
7 come down to a hoarse cry of innocence and belabored finger-pointing. These challenges
8 ignore how Cruzado’s guilt as to all twelve counts of conviction was proven at trial by
9 overwhelming evidence. *See Cruzado I*, 404 F.3d at 473-88. To this day, as his latest
10 petition makes clear, Cruzado cannot stomach the fact that he was caught, convicted, and
11 sentenced. He has repeatedly sued people at all levels of government service, from the
12 former Governor of Puerto Rico down to a line assistant in the United States Attorney’s
13 Office, out of a mistaken sense that he is the true victim here, instead of the People of the
14 United States of America, the residents of Vega Alta, and the many individuals he either
15 coerced or defrauded during his year-long mission to turn his mayoralty into a private
16 profiteering enterprise. The First Circuit was most assuredly correct when it found that
17 Cruzado’s continuing “refusal to acknowledge that he [had] committed criminal acts . . .
18 giv[es] relevant insight into his character and rais[es] concerns about his respect for the
19 law and his future conduct.” 527 F.3d at 237.

20 This is not one of those “hen’s-teeth rare” cases in which the “extraordinary
21 remedy” of issuing a writ of error coram nobis is necessary to “achieve justice.” *George*,

1 676 F.3d at 253-54 (quoting *Morgan*, 346 U.S. at 511). Simply put, the court will not
2 exercise its discretion to issue the writ in this case.⁷

3 In sum, the court finds that Cruzado's petition for a writ of error coram nobis must
4 be **DENIED**. (*See* ECF No. 1.) Judgment will enter dismissing the present petition with
5 prejudice.

6 **IT IS SO ORDERED.**

7 San Juan, Puerto Rico, this 30th day of November, 2015.

8 S/José Antonio Fusté
9 JOSE ANTONIO FUSTE
10 U. S. DISTRICT JUDGE

⁷ The court's denial of the petition prior to the filing of a response by the government follows the procedure set forth in Rule 4(b) of the Rules Governing Section 2255 Cases in the United States District Courts. The court has found that Cruzado is not entitled to coram-nobis relief as a matter of both eligibility and, assuming eligibility, discretion. Rule 4(b) is the procedure to follow if one were to treat this case as a section 2255 petition. The standard of Rule 4(b) seems appropriate for this kind of filing under its particular circumstances.